

**Retirement Villages Act 2003 Monitoring Project:
Disputes Process**

**Report 1: International Comparison of Disputes
Processes and Collation of Best Practice Resources**

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Bev James, Public Policy & Research with CRESA
bevjames@xtra.co.nz

CONTACT DETAILS

Key contact: Bev James

Director

Public Policy & Research Ltd

Address: P O Box 11260
Manners Street
Wellington 6142

Phone: 027 2478353

Email: bevjames@xtra.co.nz

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1 INTRODUCTION

This report is one of two reports produced for the Commission for Financial Capability's (the Commission) monitoring project on the disputes resolution process under the Retirement Villages Act 2003 (the Act). It consists of:

- A comparative review of dispute processes in retirement villages in overseas jurisdictions. New Zealand shares the retirement village model and legislative protections with only a few jurisdictions, primarily the eight jurisdictions in Australia. These are focused on in this report. In addition, retirement housing schemes in the United Kingdom are considered. While the retirement housing sector, market and legislation are very different in the United Kingdom, there has been considerable evaluation of housing dispute resolution processes, which can inform best practice in New Zealand.
- A summary of relevant assessments and evaluations of dispute procedures in retirement villages elsewhere.
- A summary of best practice resources for dispute resolution and prevention.
- Analysis of New Zealand's model of retirement village disputes resolution and other jurisdictions in relation to the New Zealand Law Commission's best practice benchmarks and best practice principles identified in Australia and the United Kingdom.

This report is structured as follows:

- Section 2 describes the monitoring project's scope, objectives and methods.
- Section 3 describes retirement housing in the selected jurisdictions.
- Section 4 presents the legislative mechanisms and structures covering retirement housing and disputes resolution.
- Section 5 outlines the numbers of complaints and disputes that arise.
- Section 6 describes the nature of complaints and disputes.
- Section 7 presents reviews and evaluations of housing dispute resolution systems.
- Section 8 presents best practice in housing dispute resolution.
- Section 9 presents best practice in housing dispute prevention.
- Section 10 considers the implications of best practice in housing dispute resolution for New Zealand.

2 MONITORING PROJECT SCOPE, OBJECTIVES & DATA COLLECTION

In summary what we know about the number of retirement village complaints and disputes in New Zealand is that:

- Over an eight year period (2007-2014), 23 disputes entered the formal dispute resolution process under the Act. The number of disputes heard by a dispute panel per year has ranged from none to four. Of those 23 disputes, 14 reached a decision. Nine disputes were withdrawn and may or may not have been resolved outside of the panel process. It is not known whether those have been resolved because there is no statutory requirement for parties to report on the outcome of the case after it is withdrawn.
- In addition to the 3 disputes heard by a disputes panel in 2014, statutory supervisors reported a total of 92 complaints coming to their attention in 2014.
- Three national level organisations – Commission for Financial Capability, Retirement Villages Association, Citizen’s Advice Bureau (CAB) – reported a total of 49 complaints in 2014 (although this may double count some complaints which were made to more than one organisation)
- In addition, four national level organisations – Age Concern, Consumer New Zealand, Seniorline and Grey Power Federation – received an estimated 122 complaints in 2014. Again, this may double count some complaints.
- The latest random surveying of residents undertaken in April and May 2015 suggests almost 12 percent of residents made a complaint to their village over the last two years.
- The large majority of complaints are made by residents or residents’ families.
- National organisations receive a far greater number of enquiries seeking information and advice about retirement villages than complaints about villages.
- Residents and their families use a range of organisations to seek information and advice and to make complaints about retirement villages. These include the Commission for Financial Capability, Retirement Villages Association, CABs, Age Concern, Consumer New Zealand, Seniorline, Grey Power Federation, District Health Boards and Community Law Centres.

This section briefly discusses why the Commission is interested in monitoring complaints and the formal dispute process and then provides a summary of the methods used to collect data for this monitoring report.

2.1 Commission Monitoring, Project Scope and Objectives

The Commission has a responsibility to monitor the operation of the industry and regulatory settings and whether they deliver adequate protection for residents and support the viability of the sector. This monitoring project focuses on the operation of the structures and processes for dispute resolution set out in the Act and regulations. Briefly, that process requires operators to have a written policy and procedure within their village to deal with

complaints (a complaints facility). If a complaint cannot be resolved, the matter may require resolution by a dispute panel established in accordance with provisions in the Act and in the Retirement Villages (Disputes Panel) Regulations 2006. The Commission administers the dispute process and approves the list of people that can be appointed to a panel.

The aim of the monitoring project is to assess the level of effectiveness of the formal dispute resolution structures and processes. It is intended to provide a resource for the Commission and those involved in retirement villages as advisors, consumers or operators. The key objectives of this monitoring project are to examine:

- Levels of understanding among residents and operators of the disputes process.
- Experiences of those who have used the disputes process including residents, operators, dispute panellists, statutory supervisors and lawyers.
- Users' assessment of the effectiveness of the disputes process in resolving issues.
- Whether the disputes process achieves the aims of the Act and protects residents' interests in the village.

2.2 Data Collection

This monitoring project has sought information on both 'disputes' and 'complaints'. There are two reasons for this approach. Firstly, in New Zealand the Act includes provision for dealing with complaints through a procedure within the village, as well as disputes through the disputes panel. Together those provisions offer a framework within which residents and operators can resolve issues. Secondly, there is an obvious relationship between complaints and disputes. If a complaint is not dealt with fairly and to the satisfaction of parties, it may then become a more serious dispute.

For data collection and analysis, a clear working definition of complaint and dispute was required. For the purpose of this report, the term 'complaint' refers to an issue or matter that a resident brings to the attention of the manager or operator for resolution. A complaint denotes that an issue has reached a level of sufficient concern for the resident to expect 'something to be done about it'. A complaint is distinguished from a suggestion or a request to the operator.

This report has sourced complaints data from the administrative records of external bodies that have had retirement housing matters brought to their attention by a resident. Those bodies are: the statutory supervisor (in New Zealand), a service provider, advocacy or advisory body.

A 'dispute' refers to an issue or matter that is the subject of a formal dispute resolution process external to the housing provider. 'Dispute' is used to refer to those matters that have resulted in a dispute notice in New Zealand, and to those matters dealt with by a tribunal, court or dispute resolution body in Australia and the United Kingdom.

An internet search was conducted of Australian:

- Retirement village legislative provisions relating to dispute resolution.
- Reviews and evaluations of retirement village disputes resolution processes.
- Retirement village dispute process information guidelines for residents and operators.
- Best practice material on retirement village complaints and disputes processes.
- Best practice material on handling housing complaints and disputes.
- General best practice material on handling complaints and disputes.
- Examples of housing advocacy and advice services, particularly for older people.

The websites consulted included: state and national government legislation; tribunals or courts dealing with retirement village disputes; consumer protection/fair trading bodies; state ombudsman; state government older people's agencies; non-government older people's organisations, dispute advocacy and advice services; retirement village residents' associations; retirement village operators' associations and community housing peak bodies.

An internet search for UK retirement housing information was conducted on the following:

- Reviews and evaluations of housing dispute resolution processes.
- Housing dispute process information guidelines for residents and operators.
- Best practice material on handling housing complaints and disputes.

The websites consulted included: UK Law Commission; residential property tribunals; Scottish Government; ombudsman's offices; older people's advocacy organisations; housing advice services and housing provider peak bodies.

New Zealand material on retirement village dispute resolution was obtained through websites searches of the Ministry for Business, Innovation and Employment and the Commission for Financial Capability. Searches for material on disputes resolution were done on the websites of the Government Centre for Dispute Resolution, the New Zealand Law Commission, Consumer New Zealand and the Ombudsman.

3 RETIREMENT VILLAGES IN NZ AND OVERSEAS

New Zealand shares the retirement village model with only a few jurisdictions overseas, primarily the eight state jurisdictions in Australia. Those Australian jurisdictions are similar to New Zealand in terms of the characteristics of the retirement village sector, retirement village housing model, the legislation and formal dispute resolution procedures. The other jurisdictions reviewed, although in less depth than the Australian jurisdictions, are the three in the United Kingdom: England and Wales; Scotland; and Northern Ireland respectively.

The United Kingdom has significant differences compared to New Zealand in terms of retirement housing market characteristics, legislative frameworks and residents' protections, however, some major reviews of housing dispute resolution systems and best practice material can inform New Zealand's retirement village dispute resolution processes.

Table 1 summarises data on the size of the retirement housing sector in New Zealand, Australia and the United Kingdom. Caution is required in comparing the different jurisdictions because time periods differ. Time periods are indicated in the relevant table footnotes where known.

Table 3.1: Retirement Village Sector Size in NZ and Overseas

Jurisdiction	Population 65+ years in Retirement Villages	Number of Villages/Schemes
New Zealand ¹	4.5%	351
Australia ²	5%	Over 2,200
United Kingdom ³	Retirement Villages: 0.5% Retirement housing (includes RVs): 5%	Retirement Villages: approx. 100 Retirement housing: approx. 18,000

In New Zealand about 28,000 older people live in retirement villages and in Australia the number is over 135,000.⁴ Both countries have similar proportions of older people living in retirement villages. Nationally, just over 5 percent of the Australian population aged 65 and older live in retirement villages, compared to New Zealand's 4.5 percent. In the 75+ age group, 10.5 percent live in NZ retirement villages.⁵ As in New Zealand, private sector providers, particularly large corporates, dominate the provision of retirement villages in Australia. In New Zealand the license to occupy is the most common form of tenure,

¹ Jones Lang LaSalle 2014; 2013 data.

² Grant Thornton 2011; 2011 population data. 2013 Village data see <http://www.mccrindle.com.au/the-mccrindle-blog/retirement-villages-the-quiet-achievers-australia-s-highest-rated-industry>

³ Retirement village data: INsight 2014; Elderly Accommodation Counsel 2013. Retirement housing data: Pannell and Blood 2012.

⁴ NZ number is from Retirement Villages Association data. The Retirement Villages Association constitutes around 95 percent of the retirement village industry. The Australian number is from the Australian Bureau of Statistics, 2011 Census. See Australian Bureau of Statistics 2013.

⁵ Jones Lang LaSalle 2014 ; Grant Thornton 2011.

comprising over 80 percent of properties.⁶ In Australia, various forms of tenure are found in retirement villages including leasehold title, freehold title, strata/group title, company title, license to occupy, tenancy in common and periodic rental. The most common tenure arrangements differ from state to state. For example, in Victoria the most common tenure is license to occupy followed by strata title.⁷ The most common tenures used in Western Australia are leasehold, license to occupy, tenancy in common and strata title.⁸

In the United Kingdom, the retirement housing sector is of a similar size to sectors in New Zealand and Australia, however it is characterised by a variety of different tenure arrangements and models. Retirement villages are a very small part of the older people's housing sector, although expected to grow both in absolute numbers and as a proportion of older people's housing. A recent estimate puts the population residing in retirement villages as only 0.5 percent of those aged 65 and over.⁹ A much greater percentage, estimated at 5 percent, of the older population is housed in ownership, rental and leasehold schemes specifically targeted to retired people.¹⁰ The majority of retirement housing is sold on a (long) leased basis in retirement housing schemes operated by private companies or housing associations (not-for-profit community housing providers). These retirement housing schemes share some similarities with the Australasian retirement village model. For example, they provide some facilities and services, although those differ from scheme to scheme. Residents pay service charges, and may also be required to pay other charges such as exit fees. Often there are restrictions on resale.

⁶ Martin Jenkins 2010.

⁷ Consumer Affairs Victoria 2013a.

⁸ WARVA 2014.

⁹ Insight 2014.

¹⁰ Pannell and Blood 2012.

4 LEGISLATIVE REQUIREMENTS AROUND DISPUTE RESOLUTION

This section provides a brief overview of the legislatively defined settings for managing and resolving formal disputes. It looks at New Zealand, Australia and the United Kingdom.

4.1 New Zealand

The Retirement Villages Act 2003 and regulations provide the legislative framework for New Zealand's retirement village sector. The Code of Residents' Rights summarises the rights given to residents under the Act. With regard to complaints and disputes, those are:

- The right to complain to the operator and to receive a response within a reasonable time.
- The right to a speedy and efficient process resolving disputes between the resident and operator or disputes between residents.

Operators are required to establish, maintain and promulgate a process within their village to deal with complaints (a complaints facility). The Retirement Village Code of Practice 2008, which sets out minimum requirements for operators' practice, includes details about appropriate procedures for complaints as well as advising on how to resolve complaints. If a complaint cannot be resolved by the village the matter may require resolution by a dispute panel. At that stage the complaint enters a formal process, set out in the Retirement Villages (Disputes Panel) Regulations 2006.

The Act sets out what qualifies as a dispute to be heard through the dispute panel. Disputes eligible for adjudication by the disputes panel are limited to disputes around:

- A resident's occupation right agreement (ORA).
- Allegations of breaches of the Code of Residents' Rights.
- Allegations of breaches of the Code of Practice.

Some disputes are specifically excluded from the statutorily defined responsibilities and powers of the panel. Those are disputes or matters concerning health and disabilities services, or any facilities to which the Code of Health and Disability Services Consumers' Rights applies.

In addition to defining the types of disputes that can be subject to adjudication by the dispute panel, the Act sets out who may use the process. Legitimate users are residents, operators, former residents, and a personal representative of a resident. Generally, a dispute would be between a resident and the operator. However, the Act does provide for a resident to give a Dispute Notice for resolution of a dispute affecting the resident's occupation right between the resident and another resident of the village (section 53(4)). An operator may also initiate a dispute against a resident (section 54).

Broadly the disputes process is structured as follows:

- The applicant issues a Dispute Notice.
- The dispute is then heard by an independent dispute panel.
- The operator appoints one or more people to sit on the panel, selecting them from a list approved by the Retirement Commissioner. Currently there are seven approved people. The operator must consult the other parties to the dispute before making an appointment.
- The panel then conducts a resolution process. This includes a pre-hearing meeting or other method that allows all parties to communicate with one another, and the hearing.
- The panel then gives a written decision.

The panel has certain powers. It can require an ORA to be amended to comply with the Code of Practice, and it can order a party to comply with its obligations under the ORA, or give effect to a right referred to in the Code of Residents' Rights. The panel may also award costs and expenses to, or against, a party. Any party may appeal the decision, in which case the dispute would go to a District Court for disputed amounts for \$200,000 or less, or to the High Court, for amounts over \$200,000.

The costs of conducting the dispute panel are the responsibility of the operator that appoints the panel. However, the panel may refund all or part of the operator's costs as part of its decision. The dispute outcome is made public on the Commission for Financial Capability's website.

4.2 Australia

Like the New Zealand legislation, the Australian Acts are concerned with the protection of residents' and prospective residents' rights, and outline the disclosure requirements of operators, the regulation of some financial matters and requirements around resolving disputes. Most jurisdictions use a tribunal for resolving disputes. Those state jurisdictions that do not use a tribunal structure direct disputes to the civil courts.

In Australia the legislation regulating the retirement village sector is state/territory based rather than national. Each of the eight jurisdictions has an Act and associated regulations, including codes of practice in some jurisdictions. Statutes and regulations are not the same across the jurisdictions. For example, they differ in the way that a retirement village is defined. They also differ in disclosure requirements and the legal requirements around disputes processes.¹¹ Table 4.1 sets out the statutes, regulations and tribunals for each Australian jurisdiction as well as for New Zealand.

¹¹ House of Representatives Standing Committee on Legal and Constitutional Affairs 2007.

Table 4.1: Retirement Village Legislation in Australia and New Zealand¹²

Jurisdiction	Legislation	Tribunal
ACT	Retirement Villages Act 2012 Retirement Villages Regulations 2013	ACT Civil and Administrative Tribunal
New South Wales	Retirement Villages Act 1999 Retirement Villages Regulations 2009	NSW Civil and Administrative Tribunal
Northern Territory	Retirement Villages Act 1995 Retirement Villages Regulations 1995	Local court
Queensland	Retirement Villages Act 1999 Retirement Villages Regulations 2010	Queensland Civil and Administrative Tribunal
South Australia	Retirement Villages Act 1987 Retirement Villages Regulations 2006	Residential Tenancies Tribunal
Tasmania	Retirement Villages Act 2004 Retirement Villages Regulations 2005	Director of Consumer Affairs and Fair Trading, Supreme Court
Victoria	Retirement Villages Act 1986 Retirement Villages Regulations 2006	Victoria Civil and Administrative Tribunal
Western Australia	Retirement Villages Act 1992 Retirement Villages Regulations 1992 Fair Trading Act 2010 Fair Trading (Retirement Villages Interim Code) Regulation (no 2) 2014	State Administrative Tribunal
New Zealand	Retirement Villages Act 2003 Retirement Villages (General) Regulations 2006 Retirement Villages (Disputes Panel) Regulations 2006	Disputes panel Appeal to District or High Court

Consumer law plays a very significant role in regulating the Australian retirement village sector. There is a national consumer law framework provided by the Australian Consumer Law for fair trading and consumer protection, which applies in all states and territories. Services or goods provided in retirement villages under a residence contract are covered by that law. Provisions of particular relevance to the operation of retirement villages include:

- banning misleading and deceptive conduct in trade or commerce,
- making unfair terms in consumer contracts void, and

¹²Based on McCullagh 2014.

- banning specific unfair practices such as false representation of services, false testimonials and misleading prospective residents as to the suitability of services for them.¹³

These provisions have obvious implications for conduct around advertising and marketing retirement villages.¹⁴

Consumer protection agencies in states and territories are key providers of information and best practice guidelines about retirement village legislation for residents and prospective residents, including about dispute resolution processes. The Complaint Line¹⁵ has contact details for all states/territories on its website, linking consumers with their relevant state or territory consumer agency information on complaints and disputes processes.

One area where the Australian and New Zealand dispute provisions differ, is in who can take a dispute. The New Zealand legislation allows a resident to give a Dispute Notice for resolution of a dispute affecting the resident's occupation right between the resident and another resident of the village. But in some Australian states, for example, South Australia and Queensland, the tribunal cannot hear disputes between residents. However, the Northern Territory Retirement Villages Act allows a dispute between a resident and another resident to be dealt with.

4.3 United Kingdom

In the United Kingdom there is no specific legislation covering retirement villages, protection of the rights of village residents and prospective residents, or disputes in retirement villages.¹⁶ But there are protections for owner, tenants and leaseholders. All housing disputes in the United Kingdom are dealt with through tribunals in each of the three jurisdictions (England and Wales, Scotland and Northern Ireland).

Retirement leasehold housing is particularly relevant to the retirement villages disputes monitoring project. It has specific protections for residents provided through two industry codes:¹⁷ the Code of Practice of the Association of Retirement Housing Managers; and the The National House Building Council Sheltered Housing Code of Practice.

There are also general statutory protections for leaseholders that apply to leasehold retirement housing. All operators of leasehold retirement housing should have complaints procedures for residents. If that procedure fails, leaseholders whose landlord is a housing association (and some leaseholders with private landlords) have recourse to the Independent Housing Ombudsman.¹⁸ Should those avenues fail, all leaseholders can go to the First Tier

¹³ Power and Read 2012.

¹⁴ See Senior Living Online <http://www.seniorlivingonline.com.au/information/legislation.asp>

¹⁵ <http://www.complaintline.com.au/retirement-village.html>

¹⁶ INsight 2014.

¹⁷ Age UK 2014.

¹⁸ ARHM, LEASE and Age UK nd

Tribunal - Property Chamber (Residential Property) in England and similar tribunals in Scotland and Wales to seek a dispute resolution.¹⁹

The tribunal system in the United Kingdom inevitably deals with a more diverse set of older people and the range of housing disputes is much more diverse than those covered by New Zealand's Retirement Villages Act. Nevertheless, the issues, best practice principles, values and procedures, and solutions options that have arisen in evaluations of housing dispute resolution systems in the United Kingdom are useful for this monitoring project to consider.

¹⁹ <https://www.justice.gov.uk/tribunals/residential-property>

5 NUMBERS OF COMPLAINTS & DISPUTES HERE AND OVERSEAS

There is very little information on the numbers of retirement village or retirement housing disputes and complaints in New Zealand, Australia or the United Kingdom. This section draws on both the information about disputes heard in formal disputes processes and information about complaints and disputes from other sources where available.

5.1 New Zealand

In New Zealand data about dispute numbers is limited to the cases brought before a disputes panel.²⁰ The first disputes were heard in 2007. Between 2007 and 2014 a total of 23 disputes entered the formal disputes process. The number of disputes heard from 2007 to 2014 has been 14, with one additional dispute being heard by a panel and then withdrawn before a decision was issued. A further eight disputes issued a Dispute Notice and entered the formal process, but were later withdrawn. Report 2 provides detailed information about the nature and characteristics of those cases.

An earlier monitoring report suggests low awareness of the disputes process including the disputes panel. Those who were aware of the process saw it as overly adversarial and costly. These views may present barriers to use.²¹ There is a generally held view that there are low numbers of retirement village disputes in New Zealand and it has been asserted that a greater proportion of complaints go to a formal disputes process in Australia than in New Zealand. Some suggest that this is due to the role of the statutory supervisor in New Zealand, who may help to manage or defuse issues arising between residents and operators.²²

The 2006 retirement villages survey commissioned by the Retirement Commission (now Commission for Financial Capability) included an estimate of the number of disputes the dispute panel could get (this was just prior to establishing the dispute panel process). The survey asked residents and operators if they had had any complaint that could not be resolved in the previous 12 months that might have ended up at an independent panel for resolution. Only 2 percent of the resident respondents said that they made a complaint that fell into this category, and 4 percent of the operator respondents said that they had received such a complaint.²³

Earlier Commission reports note the prevalence and nature of complaints. The 2006 survey of residents and operators reported that of 173 residents surveyed, 13 percent reported making a complaint in the previous 12 months.²⁴ The Commission's 2010 monitoring report on operators noted that many operators reported few, if any complaints, although many did highlight dealing with residents' 'issues'. Three out of five operators reported receiving no

²⁰ Data on dispute numbers is collected and reported by the Commission for Financial Capability.

²¹ James and Saville-Smith 2011.

²² Segedin 2013.

²³ AC Nielsen 2006.

²⁴ AC Nielsen 2006.

complaints in the preceding 12 months.²⁵ The 2015 random survey of village residents undertaken in the context of the Commission’s research into information and advice needs among older people found that almost 12 percent of residents had made a complaint in the previous two years.

There is some data about complaints from national advisory and advocacy organisation as well as from companies providing statutory supervisors. Table 5.1 presents complaints data for these sources for 2014.

Table 5.1: Number of Complaints: Statutory Supervisors & National Organisations (2014)

Organisation	Number
Statutory Supervisors*	92
Commission for Financial Capability	20
Citizens Advice Bureaux	23
Retirement Villages Association	6

*Covenant, Foundation Corporate Trust, Anchorage Trustees, Public Trust and Trustees Executors.

Table 5.1 includes data from three national organisations. It is possible that a resident has made a complaint to more than one organisation, or to a statutory supervisor as well as to one of those national organisations. The data refer to contacts defined as complaints by the organisations. Complaints are distinguished from enquiries where residents ask for information. Multiple contacts from one person about the same issue are counted only once. In summary, the data are drawn from:

- The Commission for Financial Capability logs all enquiries from residents. Excluding enquiries for information and contacts about disputes dealt with by a dispute panel the Commission received 20 complaints in 2014, the same number as in 2013.
- The Retirement Villages Association operates a disciplinary authority to deal with complaints about member villages that are seen to bring the industry into disrepute. Anyone can take a complaint to the authority, including residents or their families. The Association may suggest ways complaints can be resolved, or they may support the response of the operator. No complaints have been so serious as to have been dealt with by the disciplinary authority in the four years it has been operating.²⁶ The Retirement Villages Association reported 5 complaints in each of the years 2012 and 2013, with 6 complaints in 2014.
- In the 12 month period 1 February 2014 to 31 January 2015, Citizens Advice Bureaux (CABs) logged 336 enquiries concerning retirement villages. Of those, only 23 of those were identified as complaints.

²⁵Martin Jenkins 2010.

²⁶ Personal communication with John Collins, Retirement Villages Association CEO. See also http://www.retirementvillages.org.nz/Site/Residents/Disciplinary_Authority.aspx

The number of complaints recorded by statutory supervisors provides the most accurate picture of the incidence of complaints. Statutory supervisors cover all retirement villages, except those few that have an exemption from having a statutory supervisor. Those data exclude any complaints that have already been resolved within the village and do not double count complaints, as each statutory supervisor has its own set of villages.

Between them the five statutory supervisors report a total of 92 complaints received over the calendar year 2014. Most complaints were made by individual residents, although some residents' committees made complaints. A few complaints were made by residents' families, or by a resident's representative, such as a solicitor. Only one complaint was made by an operator. Complaints were received from villages of all sizes. The large majority of complaints were resolved within the village, or with involvement of the head office in some cases where villages are part of a corporate entity. Often resolution has involved input from the statutory supervisor. One complaint was resolved with an independent mediator. One statutory supervisor noted that a small number of complaints appeared to be unresolved, or ongoing.

Four other national organisations, Age Concern, Consumer New Zealand, Seniorline and Grey Power Federation, were contacted about retirement village complaints. All those organisations receive complaints, mostly from residents. They were able to provide information about complaints which enabled an estimate to be made of the number of complaints received in 2014. Together the complaints they received number approximately 122. Because these are estimates, they are not included in Table 5.1.

Age Concern offices report that, in general, complaints from village residents are uncommon. One office in a region with a large number of villages reported receiving around four a year. Another region reported approximately one call a month. One office has recently had a spate of complaints about a complex targeted to older people, which is not registered as a retirement village. Grey Power Federation fields many enquiries about retirement villages, mostly from prospective residents. Complaints number approximately one a week, but most are considered to be about minor matters. Consumer NZ runs an advisory service for its members. Over a year they estimate they would receive about two contacts a month concerning retirement villages and these include both inquiries and complaints. Seniorline provides information to help older people make decisions about staying at home, retirement villages, home care, day care and rest homes. Seniorline estimates receiving approximately 15 calls per month about village matters, with only one call per month being a complaint.

5.2 Australia

In Australia there is a statutory requirement on village operators to resolve disputes. For example, in Victoria village managers are responsible for resolving disputes and there are penalties for not complying with legal requirements around disputes processes.²⁷ In South Australia the Tribunal can decline to hear a dispute if it is considered that the matter could be more adequately dealt with under the dispute resolution process established by the village management.²⁸

It is difficult to assess the number of retirement village disputes dealt with by tribunals because dispute data is generally reported at an aggregate level rather than reporting on retirement village disputes separately. For example, the New South Wales Civil and Administrative Tribunal (NCAT) hears retirement village disputes under the Consumer and Commercial Division and reports aggregate data for that division. Only two Tribunal annual data sources on retirement village disputes have been found. The State Administrative Tribunal, Western Australia, reported 10 applications in 2011-12, 1 application in 2012-13 and 4 applications in 2013-14.²⁹ In the South Australian Retirement Villages Act review, the Residential Tenancies Tribunal was reported as dealing with approximately 100 retirement villages yearly. It is unclear whether those matters were all disputes.³⁰

A wider understanding of the number of complaints and disputes can be obtained by looking at other formal disputes resolution processes outside of tribunals provided by consumer protection agencies, dispute resolution services and some residents associations and older people's advocacy organisations. Data from those sources is also limited.

- In New South Wales The Aged-care Rights Service (TARS) data from its retirement village residents' legal advice service shows, in 2012-13, 672 enquiries from village residents, 683 instances of legal advice, 148 instances of minor legal assistance, 57 legal cases and eight Tribunal appearances.³¹
- In Western Australia the Department of Commerce, which has a responsibility for the conciliation of disputes between residents and operators, conciliated or investigated 33 complaints relating to retirement villages in 2013-14.³²
- Also in the 2013-14 financial year, the Department of Justice, Tasmania, reported 5 complaints and 14 consumer enquiries under the Retirement Villages Act 2004.³³
- In Victoria retirement village disputes can be dealt with by Consumer Affairs Victoria (which provides free dispute resolution services for residents and operators) and the

²⁷ Retirement Villages Act 1986 Division 3 Dispute Mediation.

²⁸ Department for Health and Ageing 2013.

²⁹ State Administrative Tribunal 2014.

³⁰ Parliament of South Australia 2013.

³¹ TARS 2012-13. This is the most recent data available online in TARS Annual Report.

³² Department of Commerce 2014.

³³ Department of Justice 2014.

Dispute Settlement Centre of Victoria (a free government dispute resolution service). In addition, some resident, industry and seniors' groups provide dispute resolution services. In 2011-2012 Consumer Affairs Victoria received 110 complaints concerning retirement villages.³⁴ Consumer Affairs Victoria considers that its own and various other data sources underestimate the prevalence of retirement village disputes. From their research, Consumer Affairs Victoria estimates that 33 percent of consumers who experience a problem with a good or a service do not take any action. Of those who do take action, only 4 percent lodge a complaint with Consumer Affairs Victoria. Consequently, that organisation estimates there may be up to 4,000 retirement village matters requiring resolution annually in Victoria.³⁵ There are approximately 30,000 people living in retirement villages in Victoria.³⁶ This suggests that 13 percent of residents may be involved in disputes annually – only a very small proportion of which come to the notice of any complaints or disputes resolution service. Based on Consumer Affairs Victoria's own complaints data, only 0.36 percent of residents lodge a complaint with them.

- The Association of Residents of Queensland Retirement Villages has reported receiving 4,000 complaints annually from residents and their families – similar to Consumer Affairs Victoria's estimate of retirement village matters requiring resolution annually. The Association does not report how many of those go to a formal disputes resolution process, although it does suggest that many residents with complaints do not take their concerns to the tribunal or court.³⁷

Some information on reasons for the numbers of formal disputes is found in Australian commentaries. In Australia, like in New Zealand, it has been suggested that the number of formal disputes is low. This has been explained as due to general satisfaction with retirement villages, however other reasons have also been identified. In its 2009 inquiry into older people and the law, the House of Representatives Standing Committee on Legal and Constitutional Affairs commented that the level of unhappiness with retirement village arrangements is very difficult to assess and suggested that the age of those in villages and the predominance of women, meant under-reporting of concerns with the management of villages.³⁸ Consumer Affairs Victoria also cites anecdotal evidence of residents being reluctant or embarrassed to take a complaint to a resolution service.³⁹ The Queensland Retirement Villages Act review considered that many complaints are not taken through a formal process because residents are too old, unwell or intimidated to take action. Compared to operators, residents are also generally far less experienced in formal and informal dispute resolution processes and are less able to afford legal advice. These factors act as deterrents from taking disputes. The practice of operators passing on legal expenses for disputes to

³⁴ Consumer Affairs Victoria 2013a. This is the most recent complaints data available.

³⁵ Consumer Affairs Victoria 2013a.

³⁶ Residents of Retirement Villages Victoria Inc. 2012. Australian Bureau of Statistics 2011 census data.

³⁷ Association of Residents of Queensland Retirement Villages Inc 2011.

³⁸ House of Representatives Standing Committee on Legal and Constitutional Affairs 2007.

³⁹ Consumer Affairs Victoria 2013a.

residents through village operating costs has also been identified as a disincentive for residents to use the formal disputes process.⁴⁰

Australia is experiencing an increase in the number of disputes, at least in some jurisdictions. For example, in South Australia disputes rose from 18 in 2010 to 51 in 2011.⁴¹ It has been suggested that disputes may become more common in future. Evidence from the Queensland review points to an increasing number of disputes being taken by baby boomers, and an increasing number being brought by or made with the support of residents' children.⁴²

5.3 United Kingdom

The housing dispute resolution system in the United Kingdom covers people across all age groups and tenures. There is no specific dispute resolution system covering only retirement housing. A lack of data about numbers of housing disputes is apparent. In their review of housing disputes resolution, the UK Law Commission noted a lack of data on the number of housing problems, the extent to which people seek advice and the steps they follow once advice has been given. It is not known how many people resolve their disputes outside of a formal court or tribunal process. But the Commission did estimate the experience of housing problems in England and Wales as being in the order of 1 in 12 adults (8.3 percent) over a three year period.⁴³ A Scottish Government review⁴⁴ of the housing dispute system observed that the majority of disputes are resolved by the parties concerned without recourse to a court or decision-making body.

5.4 A Comparative Summary

There is a lack of data about the prevalence and incidence of retirement housing complaints and disputes in Australia, the United Kingdom and New Zealand. However, commentators in both Australia and the United Kingdom consider that the number of recorded complaints and disputes are a lot fewer than the prevalence of complaints. Many complaints may be resolved between the housing provider and resident without recourse to an external body. Estimates have been made in Victoria that 13 percent of retirement residents may be involved in disputes annually – only a very small proportion of which come to the notice of any complaints or disputes resolution service. In the United Kingdom the Law Commission has estimated the experience of housing problems in England and Wales as being in the order of 1 in 12 adults (8.3 percent) over a three year period.

⁴⁰ Parliamentary Committees 2012.

⁴¹ COTA SA 2013.

⁴² Parliamentary Committees 2012.

⁴³ The Law Commission 2008.

⁴⁴ The Scottish Government 2013.

Given those estimates, we might expect that between 8 percent and 13 percent of retirement village residents may have an issue that is expressed in a complaint, but that issue is resolved within their village. This estimate is similar to the almost 12 percent of residents making a complaint over the previous two years revealed in the 2015 random survey of residents undertaken in the Commission's information and advice research.

Perhaps most useful for our purposes is the Consumer Affairs Victoria data on reported complaints as Victoria has a comparable number of retirement village residents – around 30,000 as compared to around 28,000 in New Zealand. Based on reported complaints to that agency, 0.36 percent of village residents make a complaint to an external body. If the same percentage was applied to New Zealand, then we would expect around 101 complaints to be made to a body outside of a village. This is not far off the 92 complaints made to statutory supervisors in 2014.

6 THE NATURE OF DISPUTES AND COMPLAINTS

In New Zealand and overseas retirement village complaints and disputes fall broadly into three categories.⁴⁵

- Resident-to-resident complaints that often emerge out of communal living.
- Resident-to-operator complaints, such as complaints about village services and facilities, the operator’s failure to have and implement necessary policies or procedures, the disposal of a former resident’s unit and exit payments, or the way in which residents are treated by the operator or staff.
- Operator-to-resident complaints that might occur if the resident has breached contractual obligations of the ORA.

In many cases complaints will not escalate to the point that they move into a formal dispute process. Moreover, some complaints will not move into the formal process because of the limitations defined by statute around the scope of the formal disputes process itself. This is the case in New Zealand. This section discusses first the nature of the disputes that do move into the formal process in New Zealand. The discussion then turns to the broader spectrum of complaints arising in New Zealand retirement villages. Finally it comments on the types of complaints and disputes evident in overseas jurisdictions.

6.1 Nature of Disputes in NZ

The most common matters in dispute are the ORA, and breaches of the Code of Practice and Code of Residents’ Rights. Many disputes raise multiple issues. In the 23 disputes since 2007 financial matters, particularly around resale of the dwelling’s occupation right have dominated (11). In all, 14 disputes concern financial matters. Table 6.1 shows the broad categories of disputes. Further information on the issues in dispute is contained in Report 2.

Table 6.1: Disputes Heard by Disputes Panels since 2007 (n=23*)

Issue	Disputes
Resale matters including marketing, valuation, length of sale, refurbishment, on-going charges and exit payments	11
Fees setting, amount and increases	2
Validity of termination of ORA	2
Resident’s behaviour	2
Conduct of manager towards resident	2
Residents’ expectations around the provision of promised facilities and services	2
Repairs and maintenance to resident’s dwelling	2
Treatment of GST in fees and charges	1
Compliance with regulations regarding village bank account	1
Provision of information about village expenditure and budgets	1
Consultation with residents about changes in communal and personal spaces	1

* issues sum to more than 23 because some disputes concern more than one issue

⁴⁵ Mudford 2014.

6.2 Common Complaints in NZ Retirement Villages

Statutory supervisors report a range of complaints. Common complaints identified across the statutory supervisors are about:

- Maintenance and repairs to the individual dwelling.
- Maintenance and repairs of communal grounds and facilities.
- Standard, quality or changes in services and facilities.
- Amount of service fees and budget, and increases to service fees.
- Inadequate consultation over village development, changes in service fees, changes to community facilities.
- Resident-to-resident issues: nuisance behaviour, interference to 'quiet enjoyment' or intimidation by other residents.
- Contract breaches (unspecified).

Less common complaints received by statutory supervisors are concerned with:

- Replacement of fixtures and fittings in dwelling (e.g. carpet, curtains).
- Inadequate heating in dwelling.
- An increase in village entry age and the resulting change in older age profile of the village.
- Interactions/relationship between village manager or other staff and resident.
- Slow response to activation of personal alarm.
- Lack of accessible features in communal facilities.
- Termination fees.
- Calculation of deferred management fee.
- Appointment of new village manager.
- Access to resident's personal file.
- Technical accounting issue.
- The price paid for the licence to occupy the dwelling.
- What items are included in chattels and fixtures.
- The manner of presentation of the village's financial statement.

Information from national organisations (the Commission for Financial Capability, Retirement Villages Association, Citizens Advice Bureaux, Consumer NZ, Age Concern, Grey Power and Seniorline) shows a very wide range of complaints. They not only cover the same matters as complaints received by statutory supervisors, but also raise different issues. Common complaints include:

- Termination of ORA and sale of unit: pricing; refurbishment charges; on-going service charges; DMF charges; length of time sale takes; not being kept informed about sale progress; earthquake damage. For a resident moving to aged residential care, issues and delays around termination can delay their entry to long term care.
- Specific issues related to the individual dwelling: delay in maintenance and repairs; power outage; slow response to activation of personal alarm; inadequate heating; condition of fixtures and fittings.
- Maintenance and repairs of communal spaces: upkeep of grounds and gardens; delay in undertaking repairs and maintenance.
- Service fees and charges: provision of information about what is included in fees and charges; amount of annual increase; formula for setting increase; timing of increase.
- Management of village: conduct of village management and operational practices; frequency of manager on site.
- Inadequate consultation on changes in village: development plans; changes in services; changes in charges/fees; new village manager; reduction in staff; maintenance practices; budget.

Less common complaints:

- Multiple ORAs in village.
- Change of tenure in village.
- Statutory supervisor: exemption of village; conduct of statutory supervisor.
- Charging of fees in relation to additional care services delivered in a license to occupy dwelling. This was identified as a very common complaint by Seniorline and one DHB contacted, but only one other organisation mentioned receiving a complaint on this matter.
- Resident-to-resident issues: nuisance behaviour (e.g smoking); feeling victimised or bullied by other residents.
- Bullying or intimidation of resident by staff.
- Village rules.
- The condition of dwelling prior to purchase.
- Adverse effects from flooding and remediation.

- Damage to, theft or loss of resident's personal property.
- Unauthorised entry to dwelling.
- Confidentiality of resident's personal information.
- Lack of accessible features for physical and sensory disability in individual unit and communal areas.
- Dissatisfaction with meals in communal facilities.
- Inability of resident to access publically-funded home-based support services that they may be entitled to because of operator's requirement that residents use the operator's support services. This was identified as a common complaint by Seniorline, but not identified by any other national organisation.
- Closure of a village.
- Inability to access council rates rebate. (This is not something that the village can control).

6.3 Complaints & Disputes Overseas

In Australia there has been a succession of reports around the issues at the centre of complaints and disputes. Consumer protection organisations and residents identify similar issues. Financial matters, fees, re-sale, and changes in services predominate (Table 6.2):

- Keogh and Bradley's analysis of disputes heard in New South Wales up to 2002 found that 80 percent of disputes related to contracts. Disputes around financial matters predominated, including misunderstandings about on-going charges and increases in charges, as well as lack of consultation with residents over budgets, alleged misuse of funds for long-term maintenance, and misunderstanding over the resale payment.⁴⁶
- A 2004 report on the legal needs of older people in New South Wales noted disputes arising about ongoing service charges, departure fees, refund of entry contribution, responsibility for maintenance and repairing damage to the dwelling, village rules, and reduction in village services.⁴⁷
- Recent analysis by the New South Wales Civil and Administrative Tribunal summarised commonly disputed issues as: budgets and auditing requirements; capital maintenance vs capital replacement, and operator obstruction of residents' committees.⁴⁸
- Issues before tribunals in Queensland, New South Wales and Victoria over the decade to 2010 focus on financial matters, with an increasing preponderance of disputes about ongoing charges. Particularly when:
 - the resident is away or hospitalised for an extended period,

⁴⁶ Keogh and Bradley 2002.

⁴⁷ Ellison et al 2004.

⁴⁸ Koumoukelis and Kinny 2014.

- the resident dies and the dwelling is vacant pending resale, or
- changes in weekly fees.

Table 6.2: Retirement Village Disputes & Complaints in Australia⁴⁹

Reporting Agency	Nature of Complaints
Consumer Affairs Victoria	<ul style="list-style-type: none"> • Maintenance and repair issues • Entry, on-going and exit fees • Poor customer service • Village procedure • Poor conduct of operators • Misunderstandings about rights and responsibilities • Unfair contract terms
Western Australia Retirement Villages Association	<ul style="list-style-type: none"> • Management of the village • Maintenance of the village • Fees and charges • Refurbishment of units or common areas • Provision or removal of promised services or facilities • Neighbour problems
Western Australia Department of Commerce	<ul style="list-style-type: none"> • Fees, rates and charges • Meaning of contract terms • Disclosure and the provision of information • Construction of facilities • Maintenance • Marketing of units • Sale of units • Budget expenditure • Dispute resolution processes • Rights and responsibilities of residents and operators • Distinction between termination and variation of resident contracts • Definition of 'optimal' services • Purpose and application of reserve funds
House of Representatives Standing Committee, Legal & Constitutional Affairs	<ul style="list-style-type: none"> • Fees and charges • Misleading advertising

⁴⁹ Consumer Affairs Victoria 2013a; WARVA 2013; Department of Commerce 2014; Department of Commerce 2010:105; House of Representatives Standing Committee on Legal and Constitutional Affairs 2007.

In the United Kingdom, the Law Commission noted that housing problems are at the top, or near the top of the list of all complaints brought to Citizens Advice Bureaux and other advisory agencies.⁵⁰ Similarly, from April-June 2014, the Legal Aid Agency for England and Wales reported that 87.5 percent (14,000 of 16,000) of its cases under the social welfare category of civil legal aid related to housing.⁵¹

The UK Law Commission identified broad types of housing problems experienced by householders including:

- problems with the environment or common areas surrounding the dwelling;
- lack of repairs and maintenance;
- neighbour problems;
- housing provider / property manager failure to respond to service requests;
- problems with the clarity of the housing agreement; and
- problems arising from homelessness or vulnerability.

Problems experienced by housing providers include problems with residents not paying rents or fees, not complying with requirements about looking after the property and having unauthorised persons on the property.

The Leasehold Advisory Service (LEASE) reports that the two top issues customers raise with them when considering applying to the First-tier Tribunal (Property Chamber) are service charges and the ‘right to manage’ (a statutory provision allowing residents to participate in the management of the property). On its website LEASE provides an overview of the key points to consider for each issue, and links to the relevant law, as well as references to cases that may help leaseholders understand the framework in which the issue has been addressed by the courts and tribunals.⁵²

In Scotland the most common types of disputes have been identified as repairs (private rental disputes), rent reviews (private rental disputes), and rent arrears (social housing disputes).⁵³

⁵⁰ The Law Commission 2008.

⁵¹ Legal Aid Agency 2014.

⁵² <http://www.lease-advice.org/lvtissues/>

⁵³ The Scottish Government 2013.

6.4 A Comparative Summary

While a very wide range of complaints are received in New Zealand, they are mainly around:

- Maintenance and repairs issues affecting individual dwellings or communal facilities.
- Service fees and charges.
- Termination of ORA and sale of unit.
- Issues around the provision and expected standard of facilities and services.
- Inadequate consultation with residents over new development.
- Inadequate consultation with residents over changes to fees, services or facilities.
- Resident-to-resident issues about behaviour.
- Lack of accessible features.

These are similar to housing complaints identified in Australia and the United Kingdom. Emerging trends in retirement village complaints and disputes have been identified in Australia with baby boomers entering retirement as well as advocating on behalf of their own parents. The potential for similar trends in New Zealand should be considered, as such factors may place pressure on existing disputes processes and require them to adapt, not only to a greater number of disputes but also to more demanding applicants. A range of emerging trends are discussed in Report 2.

7 THE EFFICACY OF DISPUTE RESOLUTION SYSTEMS

There have been few attempts to evaluate dispute resolution systems for retirement villages here or overseas.

7.1 New Zealand

A number of commentators and groups have commented on the Act and there have been other Commission monitoring projects which make some assessment of the efficacy of dispute resolution systems.

Mudford has observed that sources of information about complaints and disputes are so fragmented, it is consequently challenging for residents to get information they need about: what they can complain about, who they can complain to, how complaints will be managed, the nature of the procedures, and how complaints will be resolved.⁵⁴ Age Concern and Grey Power have criticised disclosure statements as providing inadequate description of disputes processes.⁵⁵

Craig also criticised the dispute panel process as too stressful, daunting and adversarial for residents. Craig argues a power imbalance exists between resident and operator, with the operator advantaged in terms of resources and understanding of the dispute process. She also notes the potential for the operator to pass on the costs of the process to both residents in the disputes and those outside of it. Craig concluded that the dispute process is flawed.

In her discussion of the village complaints facility, Craig noted a number of issues identified by the Retirement Commissioner, including lack of resident awareness of the complaints process, the process not being followed correctly, complainants not receiving information about how their complaint will be dealt with, delays in complaint resolution, and residents feeling intimidated or afraid of adverse reactions if they make a complaint.⁵⁶

In its report on tribunal reform, the New Zealand Law Commission concluded that the operator appointment of the dispute panel and payment of the panel's costs does not sufficiently guarantee the necessary perception of the panel's independence. It also noted that the panel deals with vulnerable people and suggested a particular need to consider the perception of the panel's independence in that regard. Finally, the Law Commission commented that the legislation underpinning the panel should be reviewed, including the issue of panel independence.⁵⁷

⁵⁴ Mudford 2014.

⁵⁵ Age Concern New Zealand and Grey Power New Zealand Federation 2009.

⁵⁶ Craig 2007.

⁵⁷ New Zealand Law Commission 2008:83, 130.

The Retirement Commissioner's 2009 monitoring project on statutory supervisors noted that the dispute process has a number of problems. Although those problems were not specified, it was suggested that the role and level of involvement of the statutory supervisor in dealing with complaints and disputes is unclear.⁵⁸ Another observation was that the costs of dealing with complaints and disputes was an issue for statutory supervisors, and it was suggested that this may lead to complaints not being given due consideration by them. The report suggested guidance be given to statutory supervisors as to action they could take when complaints arise that may lead to a dispute.

The statutory supervisors report also noted some other issues not specifically about complaints and disputes, but which are pertinent to this project because they could have a bearing on good practice in managing disputes, and in enabling residents in some villages to access advice and support. Those issues are:

- Some statutory supervisors only accepted appointments from operators they considered were financially strong and had good governance. This suggests that those villages needing more support may be limited in their choice of statutory supervisor. Also, villages with financial and governance problems may be more vulnerable to complaints and disputes arising and need more help from the statutory supervisor to resolve them.
- Visits to provincial villages (other than for the AGM) can be cost prohibitive for statutory supervisors. This suggests that some villages that could benefit from the statutory supervisor's involvement in resolving complaints may have only limited access to their supervisor.

The Retirement Commissioner's 2010 monitoring of operators similarly noted that the role of statutory supervisors in resolving complaints and disputes needs to be clarified and formalised. One quarter of operators responding to the monitoring survey viewed the costs of the disputes process as high. Some operators felt there was less incentive on residents than operators to resolve issues. Residents interviewed for that project also noted they could potentially face high legal costs which could inhibit using the process. That report noted some operators considered mediation would benefit both operators and residents. Finally, the report identified that some operators considered the public nature of the disputes panel would generate publicity that could adversely impact on the whole village.⁵⁹

The Retirement Commissioner's 2011 monitoring of residents' perspectives found a low awareness of the disputes process. Few residents had experience of a dispute in their village. Those participants who had a view on the disputes process, whether or not they had been involved in disputes, considered the process to be adversarial and confrontational, which presented a barrier to residents pursuing an issue. Costs were also noted as a deterrent to a resident taking a dispute. Some participants also considered that the types of dispute that residents could take to the disputes process was defined too narrowly.

⁵⁸ Retirement Commission 2009:9.

⁵⁹ Martin Jenkins 2010.

In summary, a number of commentators and monitoring projects have suggested that the retirement villages disputes process in New Zealand is characterised by:⁶⁰

- Low awareness of the disputes process among residents.
- Processes that are unsuitable for and disadvantage older people, particularly those who are vulnerable, have poor health or limited capacity.
- Cost barriers for both operators and residents.
- The panel is too narrow in the types of disputes it can hear.
- Lack of independence of the disputes panel with the operator able to select and pay the panel members.
- Lack of clarity around the role of the statutory supervisor in resolving complaints and disputes.
- Lack of advocacy support for residents.
- Little use of alternative dispute resolution options.

7.2 Australia

A number of parliamentary committees as well as commentators have commented on the efficacy of the Australian retirement village disputes resolution process.⁶¹ Those have identified the following as issues:

- Cost barriers to residents on limited incomes who cannot afford legal services.
- Some residents have a limited understanding of their right to take a dispute. In some states it appears that both residents and operators are unaware of the processes available to resolve a dispute.
- Perceptions that the process is unfair to residents and biased in favour of the operator.
- Residents feeling intimidated, victimised or deterred from making complaints for fear of reprisals from operators or other residents.
- Lengthy delays in disputes resolution processes.
- Restrictions on the types of disputes that the tribunal or court can hear. For example, misleading and deceptive operator behaviour, harassment and intimidation, either by residents or operators, are not covered. Nor is there provision for resolving conflicts between residents.
- Restrictions on who can take disputes.

⁶⁰ Craig 2007; New Zealand Law Commission, 2008; Retirement Commission 2009; Martin Jenkins 2010; James and Saville-Smith 2011; Mudford 2014.

⁶¹ Parliamentary Committees 2012; Parliament of South Australia 2013; House of Representatives Standing Committee on Legal and Constitutional Affairs 2007; COTA SA 2013; Ellison et al 2004; Porter 2008; Department of Commerce 2010.

- Lack of advocacy support for residents. The complex nature of many retirement village disputes can make self-representation very difficult for residents, particularly if they are frail and very old.⁶²
- The enforceability of orders made by the tribunal is deficient.
- The need for more information for residents on what action can be taken if an operator does not comply with a tribunal order.
- Lack of alternative dispute resolution options.
- Examples where village avenues for resident representation and dealing with complaints and disputes had been closed through contract provisions.⁶³
- The need for improved monitoring and enforcement of compliance with retirement village legislation, in order to prevent disputes arising.⁶⁴

Those reviews tend to focus on residents' perspectives on disputes resolution, as the primary objective of Australian retirement village legislation is consumer protection. Residents' views of provisions around dispute resolution are predominantly negative. Industry peak bodies and leading operators have made submissions in which they see the processes as effective and working well. The issues of concern they raise are:

- The need for more information on the disputes procedures targeted to operators.
- Frivolous or unmeritorious complaints from residents.
- Delays in the process.
- Whether tribunal members are sufficiently knowledgeable about both the retirement villages legislation and disputes resolution.
- Residents being able to change their original claim during the proceedings (Queensland).
- Some acts do not allow for the tribunal to hear disputes between residents.

Operators also made suggestions about training for operators on complaints handling.

⁶² Ellison et al 2004.

⁶³ House of Representatives Standing Committee on Legal and Constitutional Affairs 2007.

⁶⁴ Department of Commerce 2010.

7.3 United Kingdom

The UK Law Commission conducted a major review of housing dispute resolution in 2008. Although the review was not focused on retirement housing, it nevertheless provides insights into problems with housing dispute resolution processes. The main problems identified by the Commission's assessment are:⁶⁵

- Poor access to assistance and advice (including legal advice), particularly for the most vulnerable.
- The system's effectiveness hampered by failure to address underlying housing problems.
- Significant delays in achieving a resolution.
- Costs, including costs of accessing assistance.
- A lack of coherence with a number of different agencies involved. This makes it difficult to find a clear path to resolution or a clear picture of available options.

The Scottish Government's 2013 report on improving the handling of housing disputes resolution processes identified the following issues:⁶⁶

- Most disputes could or should have been resolved at a much earlier stage, before they escalate and require court action.
- There is little access to, awareness of, and uptake of alternative dispute resolution.
- There are delays in the dispute reaching court and delays in resolving cases.
- Some tenants feel intimidated by the process.
- In general, parties lack legal representation, which can place them at a disadvantage in an adversarial system.
- Outcomes offered by the court can be limited in range and not helpful in resolving housing problems long term.

Consumer Focus Scotland's submission on access to dispute resolution identified older people as among the groups least likely to easily access justice services. They are described as experiencing barriers to legal capability and as needing more signposting of sources of advice.⁶⁷

⁶⁵ The Law Commission 2008:9.

⁶⁶ The Scottish Government 2013.

⁶⁷ Civil Justice Advisory Group 2011.

7.4 A Comparative Summary

The main issues identified in this brief review of New Zealand and Australian commentaries about retirement village formal disputes resolution process are outlined below:

- A recurring theme is that current dispute resolution structures and processes do not seem to be appropriate or responsive to the interests, needs and circumstances of older people, particularly those who are most vulnerable. There are perceptions that disputes processes are too adversarial for residents and this compromises the use of the process, its informality and the expectations of fairness.
- There appears to be low awareness among residents of disputes processes and inadequate information for residents about disputes processes.
- Operators may also benefit from better targeted information and training about complaints and disputes processes.
- There are barriers to residents using disputes processes, including informational and financial barriers.
- The scope of disputes that can be dealt with is too narrow.
- There may be a need for resident advocacy to assist residents using disputes processes.
- Alternative dispute resolution processes could be more widely and effectively used.
- The process needs to be able to effectively deal with frivolous or unmeritorious complaints from residents.
- The process needs to ensure decision-makers are sufficiently knowledgeable about both the Act and disputes resolution.
- The process must be able to deal with disputes in an efficient and timely manner.
- Many disputes revolve around financial matters. In part this appears to reflect the scope of what can be heard in disputes processes. However, it may also indicate shortcomings in how fundamental aspects of the contractual relationship between resident and operator are communicated and managed.

Specific issues raised about the New Zealand disputes process include:

- There are perceptions that the panel is not independent of the operator. This compromises the expectation that the process will treat parties fairly and transparently.
- An original objective of the process was that parties would represent themselves, however this does not appear to be usual practice.
- There appears to be little use of mediation.

Finally, the United Kingdom reviews raise the following issues of housing disputes processes that may be usefully considered in assessing the effectiveness of the New Zealand retirement village disputes process:

- Provision of assistance and advice (including legal advice) to housing consumers, particularly for the most vulnerable.
- Ensuring a process that is less intimidatory and friendlier for housing consumers to use.
- The need to deal with disputes in a cost-effective, efficient and timely manner.
- Consideration of how disputes could be resolved at a much earlier stage, before they escalate and require court action.
- More opportunities to access alternative dispute resolution.
- The need for a coherent system with agency roles clearly defined and available resolution options clearly set out.
- The need to use learnings from disputes to address underlying housing issues, so that the same disputes do not recur. Associated with that, the need for stronger incentives to encourage housing providers to make improvements to their practices.

8 BEST PRACTICE IN HOUSING DISPUTE RESOLUTION

This section presents best practice guidance for housing dispute resolution, including principles that should underpin resolution processes, guidance for operators in establishing operating complaints and disputes resolution processes, guidance for residents in making complaints and examples of advocacy services for residents. The best practice examples from New Zealand and Australia specifically focus on retirement village disputes resolution. The examples from the United Kingdom focus on best practice in housing dispute resolution.

8.1 New Zealand

The statutorily defined disputes process for retirement villages is effectively a tribunal system. The New Zealand Law Commission has set out the desirable characteristics of disputes tribunals. Those are: ⁶⁸

- Accessibility, both in terms of costs and public awareness of opportunities to seek redress through tribunals.
- Adjudication by panels whose membership and expertise are appropriate to the subject matter. Panels must be independent and also appear independent.
- Procedural rules which secure the observance of natural justice, are simple and less formal than those of the ordinary courts, and are appropriate to the nature of cases often being more inquisitorial than adversarial.
- Sufficient powers to carry out their functions, which are proportionate to those functions.
- Appropriate avenues for appeal or review of tribunal decisions, in order to ensure oversight and error correction.
- Speedy and efficient determination of cases.

The Government Centre for Dispute Resolution (GCDR) in the Ministry of Business, Innovation and Employment presents similar principles for dispute resolution: ⁶⁹

- The independence and impartiality of the service.
- Integrity and fairness to all parties.
- There is public accountability and transparency to all parties.
- Customer focus, with the service meeting the needs and expectations of users.
- Efficiency – the service is appropriate to the complexity of the issues, the nature and number of parties in dispute and is value for money.
- Effectiveness – disputes are resolved to the satisfaction of parties and do not reoccur.

⁶⁸ New Zealand Law Commission, 2008:5.

⁶⁹ Ministry of Business, Innovation and Employment 2013.

- Quality, including appropriate technical and professional expertise of the service provider.

Similarly, the Ombudsman's guidance on effective complaints handling suggests the principles of fairness, accessibility, responsiveness and efficiency.⁷⁰ Appendix 1 briefly describes four New Zealand references for establishing best practice in complaint and dispute resolution.

8.2 Australia

Australia has a more sophisticated approach to disputes that provides guidance on:

- Principles for housing dispute resolution.
- Best practice in complaint and disputes handling.
- Advocacy and advice services for residents.

Principles for Dispute Resolution

The former National Alternative Dispute Resolution Advisory Council (now part of the Australian Attorney General's Department) has set out seven principles for dispute resolution. Those principles are:⁷¹

- Parties have a responsibility to resolve disputes.
- Simple and cost-effective resolution, including alternative dispute resolution where appropriate and as early as possible.
- Parties are committed to the process.
- Access to information about dispute resolution processes.
- Parties should aim to reach agreement and if unable to resolve, should have access to courts or tribunals.
- Effective and affordable alternative dispute resolution is available.
- Dispute resolution terminology should be consistent to enhance community understanding.

In addition, Consumer Affairs Victoria notes the general principle of good communication between village managers and residents in reducing, handling and resolving complaints and disputes.⁷²

The Commonwealth Ombudsman's Better Practice Guide to Complaints Handling puts forward five fundamental principles that emphasize fairness, accessibility, responsiveness, efficiency and integration of services.

⁷⁰ Office of the Ombudsman 2012.

⁷¹ National Alternative Dispute Resolution Advisory Council 2011.

⁷² Consumer Affairs Victoria 2012a.

Best Practice for Retirement Village Disputes Handling

Australia has an array of useful best practice guidelines for retirement villages managing disputes. Examples of these are presented in Appendices 2 and 3. Appendix 2 lists examples of best practice documents in disputes handling for retirement village operators. Those documents have been chosen because they offer:

- Suggestions for setting up and managing a disputes process.
- Step-by-step actions in handling complaints or disputes.
- Recommendations for preventing or reducing disputes.
- Good communication practices.
- Templates, case studies or samples of effective practices.

Appendix 3 lists documents offering practical advice and guidance to residents involved in a complaint or dispute. Guidance for residents covers:

- The relevant disputes procedures in legislation.
- Where residents may seek advice.
- Step-by-step process for making a complaint.
- Templates for defining what the issue in dispute is about, setting out a complaint in writing, writing a dispute notice.
- Advice on how to prepare for a disputes hearing.
- Advice on how to handle a dispute with another resident or the operator.
- Case studies of residents' experiences at a disputes tribunal.

Appendices 2 and 3 exclude fact sheets and similar documents that provide general information on retirement villages and relevant legislation, operators' rights and responsibilities and residents' rights and responsibilities. Such documents often describe the legal requirements and procedures around handling complaints and disputes, but do not offer practical guidance on how to design and manage a dispute process or advice for parties using a dispute process.

In addition, Australia also has best practice guides for ancillary or related sectors including the Australian Standard on complaints handling, housing industry best practice and advice from the Commonwealth Ombudsman. Examples of those relevant to the retirement village sector are listed in Appendix 4.

Advocacy and Advice Services for Residents

Appendix 5 describes examples of advocacy and advice services specifically for older people with a dispute, including retirement village residents. These organisations provide a range of free services including advice and information about disputes resolution processes, advocacy, legal advice and educational services. They include:

- Aged Rights Advocacy Service (ARAS), South Australia.
- PAVIL – Park and Village Information Link, Queensland.
- Dispute Settlement Centre of Victoria.

- The Aged-care Rights Service (TARS), New South Wales.

8.3 United Kingdom

The UK Law Commission conducted a major review of law and procedure relating to the resolution of housing disputes in 2008. The underpinning assumption was that the current disputes resolution system would be improved through a broader and more sophisticated understanding of the nature of housing disputes and how they arise. That improved understanding would enable the best ways to respond to housing disputes to be determined, whether through judicial or alternative processes.

From their review, the Law Commission set out a framework for a more effective housing disputes resolution process. A number of housing reforms were introduced including the creation of the First Tier Tribunal - Property Chamber, which took over functions of the Leasehold Valuation Tribunals, and a new approach for dealing with complaints from social housing tenants about their landlords.

In 2013 the Scottish Government set out options for improving the effectiveness of housing dispute processes. In 2014 the Housing (Scotland) Act introduced a new private rental sector housing tribunal and private rental housing panels to resolve housing disputes.⁷³

Principles for Housing Dispute Resolution

The UK Law Commission's report outlined broad principles and values for the development of an effective disputes resolution system. Those are:⁷⁴

- All dispute resolution should be proportionate; i.e., the resources used in the system bear a “sensible relationship” to the dispute being solved.
- Prevention: Improved public awareness of housing rights and responsibilities to prevent housing problems arising.
- Early resolution: Greater use of advice, referral and assistance to those experiencing housing problems and disputes to get the issue resolved early.
- Active encouragement of other means of resolving disputes, outside of formal adjudication, such as mediation, use of ombudsmen and managerial techniques.
- Coherence, coordination and information sharing across different components of the disputes resolution system.
- Where a dispute must be adjudicated by a court or tribunal, the procedures should embrace the following values:
 - Accuracy – the system should produce the right answer.
 - Impartiality and independence.
 - Fairness.
 - Equality of arms – those in a weak bargaining position should not be unfairly treated as against those in a stronger bargaining position.

⁷³<http://www.scotland.gov.uk/Topics/Built-Environment/Housing/reform/housing-bill/contents>

⁷⁴ The Law Commission 2008.

- Transparency – both the process of reaching decisions and reasons for decisions should be clear.
- Confidentiality, privacy and avoidance of unnecessary publicity.
- Participation and access. The system must treat the person with the dispute respectfully and enable them to be heard.
- Effectiveness – the system should achieve resolution of the dispute.
- Promptness.
- Efficiency/cost – people should not be deterred from using the system because of cost, and cost should be proportionate to the issue.
- Impact – the decision should contribute to improved decision-making and housing services.

Best Practice for Housing Providers

Several dispute resolution best practice guidelines have been developed for providers of housing for older people. These are summarised in Appendix 6:

- The Code of Practice of the Association of Retirement Housing Managers, the largest body representing private landlords and social housing landlords managing leasehold retirement properties.
- The National House Building Council's sheltered housing Code of Practice. In the UK, the term sheltered housing is often used for retirement housing; i.e. housing for people aged 55 years and over. Sheltered housing offers shared communal facilities and some basic support.
- The Leasehold Advisory Service (LEASE) leasehold retirement housing information resources. LEASE is funded by government to provide free legal advice to leaseholders, landlords, professional advisers, managers and others on the law affecting residential leasehold in England and Wales.
- The Housing Ombudsman Service guidelines and elearning resources on dispute resolution. This is an alternative disputes resolution service. All housing associations and councils must be members of the Housing Ombudsman Service. Some private landlords are voluntary members. The Housing Ombudsman publishes guides for both residents and housing providers.
- The HouseMark Complaints Accreditation Scheme, developed in conjunction with the Housing Ombudsman Service. This scheme offers resources and online tools for housing providers.
- The Chartered Institute for Housing is the professional body for the housing sector in the United Kingdom and Republic of Ireland. It publishes resources for housing providers and residents on resolving complaints and disputes.
- The Scottish Public Services Ombudsman provides a free, independent and impartial service for people wanting to complain about a public service, including complaints about registered social landlords.

8.4 Age-Friendliness – A Common Theme

A common theme in the best practice guides is the importance of ensuring that complaint and dispute processes are responsive to the particular needs and circumstances of older people. Consumer Affairs Victoria points out that while older consumers are not necessarily vulnerable consumers, certain vulnerabilities are associated with ageing, such as ill health, frailty and cognitive impairment. Other vulnerabilities are associated with low income, which affects the willingness and capacity to purchase advice.⁷⁵

The House of Representatives Standing Committee on Legal and Constitutional Affairs commented on age-related vulnerability in its 2009 inquiry into older people and the law. It particularly noted the predominance of older women residents in retirement villages, and the potential for intimidation and victimisation of residents by managers as contributing to the under-reporting of complaints.⁷⁶ Similarly, the NSW Retirement Village Residents Association reports residents not making complaints for fear of upsetting the operator. In some cases residents' religious or cultural beliefs make them very reluctant to complain.⁷⁷

The Western Australia Department of Commerce observed that taking part in a dispute can be daunting and distressing for residents. In its view, many people live in retirement villages because they want security and stability, not conflict, yet dispute resolution processes do not appear to provide security, stability or certainty. The Department commented on the need for a model of dispute resolution that adequately addresses the needs of residents whose age and vulnerability place them in a very limited position in terms of representing themselves.

These commentaries underscore the importance of tailoring disputes resolution processes to the needs of older people, who may be particularly vulnerable, have impairments that make communication difficult, or be reluctant to complain. The Western Australia Department of Commerce suggested that, for a dispute resolution process to be effective for residents, it must be:

- accessible and approachable;
- take into account the specific needs of seniors;
- fair, and
- well promoted to residents.⁷⁸

⁷⁵ Consumer Affairs Victoria 2013a.

⁷⁶ House of Representatives Standing Committee on Legal and Constitutional Affairs 2007.

⁷⁷ Retirement Village Residents Association Inc. NSW 2011.

⁷⁸ Department of Commerce 2010:107.

9 PREVENTING DISPUTES

In Australia and the United Kingdom considerable effort is put into preventing the same complaints emerging again and again and stopping complaints developing into serious disputes. This involves:

- Identifying issues causing complaints or disputes and changing policies or practice to address this.
- Early intervention to get the issue resolved quickly and fairly.

Dispute prevention and early intervention are of benefit not only to residents, but also to operators as escalating complaints are expensive and can affect the operator's reputation. Appendix 7 presents information from Australia and the United Kingdom on housing disputes prevention.

9.1 Australia

A number of Australian reviews have noted that disputes often emerge out of poor policies, contracts or systems. The national 2009 inquiry into older people and the law conducted by the House of Representatives Standing Committee on Legal and Constitutional Affairs commented on three areas relating to the transparency and accountability of retirement village contracts that generate complaints or disputes – the complex nature of contracts, fees and charges and misleading advertising.⁷⁹ In Victoria the Residents of Retirement Villages Inc. notes that disputes have been caused by contracts that are unclear about legal obligations of management and resident committees, the fee structure, financial obligations of operators and residents, and the distinctions between on-going costs and capital costs.⁸⁰

In its 2010 review of Western Australian retirement village legislation the Department of Commerce found that confusion, ambiguity and misunderstandings led to disputes particularly in relation to the rights and responsibilities of residents and operators, the distinction between termination and variation of resident contracts, the definition of 'optional' services, and the purpose and application of reserve funds. The review commented: "Many of the matters that were conciliated were ones that required clarification of the legislation or the responsibilities of operators."⁸¹

Some states have introduced programmes and guidance aimed at preventing issues that continue to generate complaints. Based on its review, the Department of Commerce in Western Australia suggested that operators be encouraged to establish specific practices to reduce the likelihood of disputes arising. Such practices could involve the use of 'good faith' or 'fair dealing' agreements that include defining mutual objectives between residents and operators, setting out ways of improving communication and identification of likely

⁷⁹ House of Representatives Standing Committee on Legal and Constitutional Affairs 2007.

⁸⁰ Residents of Retirement Villages Victoria Inc. 2012.

⁸¹ Department of Commerce 2010:105.

problems.⁸² The Department has introduced a proactive compliance programme where it encourages and assists operators to comply with the Retirement Villages Act requirements. Departmental officers also meet with village residents to discuss issues they have with the management of their village.⁸³

Consumer Affairs Victoria has published good practice protocols focused on preventing complaints and disputes through better informing residents and improving transparency and clarity about policies, procedures and financial information. The protocols suggest actions that manager can take to address issues that commonly cause friction in villages such as: changes to services; maintenance charges and process; what is covered by service and capital charges; presentation of annual financial statement; marketing procedures for a unit when a resident leaves or dies; and refurbishment and reinstatement of units. The document also provides guidance so that if issues arise, they can be dealt with quickly before matters escalate. The Government and Consumer Affairs Victoria expect that managers will work to implement the protocols in their villages.⁸⁴

The NSW Civil and Administrative Tribunal (NCAT) publishes retirement village case studies on its website that reflect tribunal decisions.⁸⁵ Although the case studies are not specifically for the purpose of encouraging continued service improvement, they could be used in that way as they provide information on the outcomes of different issues covered by the Tribunal, such as capital maintenance and repairs, recurrent charges, sale of a resident premises and termination of a residence contract.

Victoria and Western Australia have introduced reforms of their respective retirement village acts to reduce disputes associated with ineffective information provision or inadequate disclosure.⁸⁶

9.2 United Kingdom

The UK approach to effective housing dispute resolution includes four principles that focus on dispute prevention and early intervention. Three principles focus on enhancing the consumer sovereignty of housing consumers to prevent housing problems arising:

- Improving householders' awareness of their housing rights and responsibilities.
- Providing advice to improve consumers' decision-making about their housing choices.
- Advice, referral and assistance to those experiencing housing problems to get the issue resolved, before it escalates to a serious dispute that requires a tribunal process.

⁸² Department of Commerce 2010:109.

⁸³ Department of Commerce 2014.

⁸⁴ Consumer Affairs Victoria 2012b.

⁸⁵ http://www.ncat.nsw.gov.au/Pages/cc/Divisions/Retirement_villages/Case_studies.page.aspx

⁸⁶ Consumer Affairs Victoria 2014; www.commerce.wa.gov.au/consumer-protection/changes-retirement-villages-laws

Consumer Focus Scotland sums up these principles:

“there is a need to ensure that people have sufficient baseline knowledge to be able to identify the legal aspects of decisions they make, ensure they are able to access appropriate information and support to make informed decisions about actions that have legal consequences, and be able to identify sources of help and resolution if a problem arises.”⁸⁷

Several organisations, including the Association of Retirement Housing Managers, LEASE, Age UK, the Chartered Institute of Housing, the Housing Ombudsman Service and the Scottish Public Services Ombudsman, publish information specifically for householders explaining how they can make a housing complaint or use a disputes process. Some of those also provide advisory services to assist older people who have housing problems needing resolution.

The fourth principle is about ‘Impact’ – using learnings from complaints and disputes outcomes to improve housing service delivery so that similar problems do not arise in future. The Housing Ombudsman Service⁸⁸ gives a checklist for organisations to show that complaints are being used positively to improve the housing service:

- Complaints data is recorded and analysed.
- The outcomes of complaints are reviewed for their application to improving service delivery.
- Residents are informed about the learnings and improvements arising from complaints. This demonstrates that the provider is listening to residents.
- The provider is proactive in their response to complaints.
- The provider receives positive as well as negative feedback.

⁸⁷ Civil Justice Advisory Group 2011.

⁸⁸ See <http://www.housing-ombudsman.org.uk/learning-faqs/dispute-resolution-principles/learn-from-outcomes/#.VSyXlfmUfSg>

10 LEARNING FROM BEST PRACTICE

This comparative review of dispute resolution systems for retirement villages and retirement housing shows that New Zealand, Australia and the United Kingdom have similar experiences. They also broadly agree on the principles for dispute resolution and the desirable characteristics of dispute resolution processes. Table 10.1 provides a comparative summary of those principles and characteristics.

Table 10.1 Principles of an Effective Dispute Resolution System

	NZ Law Commission	GCDR – NZ	National Alternative Dispute Resolution Advisory Council - Australia	UK Law Commission
PREVENTION AND IMPACT		Decrease in the number of disputes and reoccurrence rates. Continuous improvement and innovation.		Prevention: Improved public awareness of housing rights and responsibilities to prevent housing problems arising. Impact: the decision should contribute to improved decision-making and housing services.
ACCESS	Accessibility, both in terms of costs and public awareness of opportunities to seek redress		People have a responsibility to take genuine steps to resolve or clarify disputes and should be supported to meet that responsibility. People in dispute should have access to, and seek out, information that enables them to choose suitable dispute resolution processes and informs them about what to expect from different processes and service providers. If unable to resolve the dispute, people should have access to courts and tribunals.	Participation and access: The system must treat the person with the dispute respectfully and enable them to be heard. Cost: people should not be deterred from using the system because of cost.

Bev James, Public Policy & Research with CRESA
 RETIREMENT VILLAGES ACT 2003 MONITORING PROJECT: REPORT 1 INTERNATIONAL
 COMPARISON OF DISPUTES PROCESSES AND COMPLIATION OF BEST PRACTICE RESOURCES

EARLY RESOLUTION			Steps to resolve disputes including using ADR should be made as early as possible and both before and throughout any court or tribunal proceedings.	Early resolution: Greater use of advice, referral and assistance to those experiencing housing problems and disputes to get the issue resolved early. Active encouragement of other means of resolving disputes, outside of formal adjudication, such as mediation, use of ombudsmen and managerial techniques.
QUALITY AND EXPERTISE	Panel membership and expertise are appropriate to the subject matter	Quality, including appropriate technical and professional expertise of the service provider.	Effective, affordable and professional ADR services which meet acceptable standards should be readily available to people as a means of resolving their disputes.	
INDEPENDENCE	Panels must be independent and also appear independent	Independent, impartial, neutral.		Impartiality and independence.
FAIRNESS	Procedural rules which secure the observance of natural justice, are simple and less formal than those of the ordinary courts, and are appropriate to the nature of cases often being more inquisitorial than adversarial. Appropriate avenues for appeal or review.	Integrity and fairness to all parties. Procedural fairness.	People in dispute should aim to reach an agreement through dispute resolution processes. They should not be required or pressured to do so if they feel it would be unfair or unjust.	Fairness. Equality of arms: those in a weak bargaining position should not be unfairly treated as against those in a stronger bargaining position.

Bev James, Public Policy & Research with CRESA
 RETIREMENT VILLAGES ACT 2003 MONITORING PROJECT: REPORT 1 INTERNATIONAL
 COMPARISON OF DISPUTES PROCESSES AND COMPLIATION OF BEST PRACTICE RESOURCES

EFFICIENT AND PROPORTIONATE	Speedy and efficient determination. Sufficient and proportionate powers.	Efficiency: the service is appropriate to the complexity of the issues, the nature and number of parties in dispute and is value for money	Disputes should be resolved in the simplest and most cost-effective way.	Proportionate: the resources used in the system bear a “sensible relationship” to the dispute being solved. Cost should be proportionate to the issue. Promptness.
EFFECTIVE		Effectiveness: disputes are resolved to the satisfaction of parties and do not reoccur.		Effectiveness: the system should achieve resolution of the dispute. Accuracy: the system should produce the right answer.
TRANSPARENCY		Public accountability and transparency to all parties. Clearly articulated quality standards.		Transparency: both the process of reaching decisions and reasons for decisions should be clear.
CUSTOMER FOCUS		Customer focus, with the service meeting the needs and expectations of users. Users are involved in service improvement.	People who attend a dispute resolution process should show their commitment to that process by listening to other views and by putting forward and considering options for resolution.	Confidentiality, privacy and avoidance of unnecessary publicity.
SYSTEM COHERENCE		End to end services are seamlessly connected.	Terms describing dispute resolution processes should be used consistently to enhance community understanding of, and confidence in them.	Coherence, coordination and information sharing across different components of the disputes resolution system

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APPENDIX 1: NEW ZEALAND BEST PRACTICE IN COMPLAINTS AND DISPUTE HANDLING

Title	Summary
<p>Ministry of Business, Innovation and Employment, 2013 <i>Dispute Resolution: Best Practice Report 1 of 2 to Joint Ministers</i></p> <p>Ministry of Business, Innovation and Employment, 2014 <i>Dispute Resolution: Best Practice Report 2 of 2 to Joint Ministers</i></p>	<p>Report 1 presents ADR principles.</p> <p>Report 2 includes ADR design principles based on the ADR principles.</p>
<p>2014 Aust/NZ standard. <i>Guidelines for Complaint Management in Organizations AS/NZS 10002:2014</i></p> <p>http://shop.standards.co.nz/catalog/10002:2014%28AS%7CNZS%29/scope</p>	<p>Covers planning, design, operation, maintenance and improvement.</p> <p>Full description of the standard must be purchased from Standards NZ.</p>
<p>Office of the Ombudsman 2012 <i>Effective Complaints Handling</i></p>	<p>This guide sets out three steps in an effective complaints process: enabling complaints, responding to complaints, accountability and learning. It provides a step by step guide to handling a complaint, to the conclusion of recording the outcome.</p> <p>It explains how complaints can be reviewed and used to improve customer service.</p> <p>There is a checklist for an effective complaints process, which covers: customer focus; visibility; accessibility; responsiveness; objectivity and fairness; confidentiality; remedy; review; accountability; continuous improvement.</p>

APPENDIX 2: AUSTRALIAN DISPUTE RESOLUTION GUIDELINES FOR VILLAGE OPERATORS

Title	Summary
<p>Department of Commerce, Western Australia <i>Dispute Resolution Guidelines for Retirement Village Managers</i></p> <p>https://www.commerce.wa.gov.au/sites/default/files/atoms/files/rv_guidelines_managers_dispute_resolution.pdf</p>	<p>Gives information on the relevant legislation and formal dispute resolution process.</p> <p>Explains the agencies where a dispute can be dealt with.</p> <p>Gives advice on how to deal with disputes between residents.</p> <p>Gives advice on how to informally deal with a resident's complaint.</p>
<p>Office for the Ageing, South Australia <i>Retirement Villages - Better Practice Guidelines No. 4 Dispute Resolution</i></p> <p>http://www.sa.gov.au/_data/assets/pdf_file/0006/126789/RV-Guidelines-04-Dispute-resolution.pdf</p>	<p>Gives information on the relevant legislation, formal dispute resolution process and requirements for villages to have a disputes resolution process.</p> <p>Gives general guidelines for communication with residents.</p> <p>Suggests key steps for a village dispute resolution process.</p> <p>Gives an example of a village dispute resolution process.</p>
<p>Consumer Affairs Victoria 2012 <i>Retirement Villages – Internal dispute resolution guidelines for retirement village owners and managers</i></p> <p>http://www.consumer.vic.gov.au/library/publications/businesses/retirement-village-operators/internal-dispute-resolution-guidelines-for-retirement-village-owners-and-managers.pdf</p> <p>website information: http://www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages/living-in-a-retirement-village/resolving-disputes-in-your-retirement-village</p>	<p>Summarises legal requirements for the village's internal dispute resolution scheme and the manager's obligations.</p> <p>Recommends good practice in managing the scheme.</p> <p>Includes tips for handling complaints, including complaints between residents.</p> <p>Explains what the mandatory internal dispute resolution document, which sets out the village's procedures for handling complaints and mediating disputes between residents, must cover.</p> <p>Explains how to keep residents informed about the scheme.</p> <p>Presents a sample dispute resolution process.</p> <p>Explains where unresolved complaints and disputes can be referred for resolution.</p> <p>Provides contact details for advice and services.</p>

<p>Retirement Living Council - Industry Standard Lifemark Village Scheme Standards 2013 https://www.propertyoz.com.au/library/Lifemark%20Standards.pdf http://www.retirementliving.org.au/industry/lifemark/</p>	<p>Industry accreditation scheme with standards including best practice performance criteria for retirement villages. Standard 6.1 Dispute resolution / feedback</p>
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APPENDIX 3: AUSTRALIAN DISPUTE RESOLUTION INFORMATION FOR VILLAGE RESIDENTS

Title	Summary
<p>Western Australian Retirement Villages Residents Association Inc. Information Paper No. 5 Disputes and Complaints http://warvra.org.au/wp-content/uploads/2014/03/INFORMATION-PAPER-5-Disputes-and-Complaints-19-Jul-13.pdf</p>	<p>Provides a step-by-step process for a resident wanting to take action on a matter.</p> <p>Gives information on the relevant legislation.</p> <p>Explains the disputes procedures that the retirement village should have in place, and information about disputes that should be contained in the resident’s contract.</p> <p>Suggests where to seek advice.</p> <p>Explains the agencies where a dispute can be dealt with and how to lodge a formal complaint.</p> <p>Gives a sample template for a dispute letter / notice of dispute.</p>
<p>Department of Commerce, Western Australia <i>Dispute Resolution Guidelines for Retirement Village Residents</i> https://www.commerce.wa.gov.au/sites/default/files/atoms/files/rv_guidelines_residents_dispute_resolution.pdf</p>	<p>Gives information on the relevant legislation and formal dispute resolution process.</p> <p>Suggests where to seek advice.</p> <p>Explains the agencies where a dispute can be dealt with.</p> <p>Gives advice on how to handle a dispute with a fellow resident.</p> <p>Gives advice on how to handle a dispute with village management.</p>
<p>Office for the Ageing, South Australia <i>Dealing with disputes</i> https://www.sa.gov.au/_data/assets/pdf_file/0007/38968/Dealing-with-Disputes-Dec-2013.pdf</p>	<p>Gives information on the relevant legislation and formal dispute resolution process.</p> <p>Suggests where to seek advice.</p> <p>Describes differences between formal dispute resolution process, informal processes, and mediation.</p> <p>Provides information about the Tribunal where a dispute can be dealt with.</p> <p>Explains how to apply to the Tribunal for a hearing.</p> <p>Explains how to prepare for a hearing as a respondent.</p> <p>Explains about legal representation, access to an interpreter, withdrawal of an application and group applications.</p>

<p>Retirement Village Residents Association Inc. NSW 2011 <i>A Guide to the Consumer, Trader and Tenancy Tribunal</i>⁸⁹ http://www.rvra.org.au/Documents/CTTTGuide110510.pdf</p>	<p>The purpose of the guide is to help residents in their involvement with the Tribunal, whether as an Applicant or Respondent.</p> <p>Explains the legislation and formal disputes resolution process.</p> <p>Gives information on advisory and service agencies, including those that may help in preparing material for a Tribunal hearing.</p> <p>Provides a step-by-step form to help the resident define the issue between the resident and the operator.</p> <p>Summarises the procedures and documentation required to prepare an Application.</p> <p>Presents case studies of residents' experiences at the Tribunal.</p>
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⁸⁹ Although the Consumer Trader and Tenancy Tribunal was incorporated into the NSW Civil and Administrative Tribunal in 2014, this document is included because of the range of topics it includes in its guidance. The Residents Association is currently revising the information about the Tribunal on its website.

APPENDIX 4: AUSTRALIAN BEST PRACTICE IN COMPLAINTS AND DISPUTE HANDLING

Title	Summary
<p>Australian Standard on Complaints Handling (AS ISO 10002-2006) http://www.saiglobal.com/pdftemp/previews/osh/as/as10000/10000/10002-2006.pdf</p> <p>Superseded by 2014 joint Australia/NZ standard. http://shop.standards.co.nz/catalog/10002:2014%28AS%7CNZS%29/scope?</p>	<p>Provides guidance on complaints management.</p> <p>Covers the planning, design, operation, maintenance and improvement of complaints handling.</p> <p>The guidance aims to: provide an open and responsive process; enable complaints to be managed in a systematic, consistent and responsive manner; enable the organisation to identify trends and eliminate causes of complaints and improve operational effectiveness; support staff to improve complaints management skills; provide a basis of review and process improvement; reduce the likelihood of complaints developing into disputes.</p>
<p>National Community Housing Standards Manual 2010 http://chfa.com.au/sites/default/files/node/185/doc_nchs_manual_may2010.pdf</p>	<p>Sets out best practice in service delivery for the community housing sector.</p> <p>Standard 3.6 complaints and appeals of decisions are addressed promptly and fairly.</p> <p>Summarises good practice including explaining the procedures, record keeping, how people will be informed. Processes are respectful, do not penalise and take into account culture and language issues. Complaints and appeals are resolved promptly and simply.</p> <p>Processes to support good practice include staff training in complaints handling and monitoring effectiveness of the process.</p>

<p>Commonwealth Ombudsman 2009 <i>Better Practice Guide to Complaint Handling</i> http://www.ombudsman.gov.au/docs/better-practice-guides/onlineBetterPracticeGuide.pdf</p>	<p>Culture: staff understanding of the complaints process, training and resources.</p> <p>Principles: fairness, accessibility, responsiveness, efficiency, internal integration, integration with other agencies.</p> <p>People: appropriate attribute, skills and training.</p> <p>Processes are clearly documented and easy to understand and apply.</p> <p>Analysis: regular reporting and monitoring for service improvement, process is reviewed to improve its effectiveness.</p> <p>Supplemented by fact sheets for different aspects of complaints.</p>
<p>Ombudsman Western Australia 2010 <i>Guidelines on Complaint Handling</i> http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Binder-Complaint-Handling.pdf</p>	<p>Covers: effective handling of complaints; making your complaint handling system accessible; complaint handling system checklist; principles of effective complaint handling; guidance for complaint handling officers; dealing with unreasonable complaint handling conduct; investigation of complaints; procedural fairness; remedies and redress; good record keeping.</p>

APPENDIX 5: AUSTRALIAN ADVOCACY AND ADVICE SERVICES

Organisation	Description
<p>Aged Rights Advocacy Service (ARAS) South Australia</p> <p>http://www.sa.agedrights.asn.au/</p>	<p>The service launched an advocacy service for retirement village residents in 2014. The service provides information about rights and entitlements in relation to residency in a village, and advocacy support or representation when an individual or group of residents needs to contact an administering authority or attend a disputes tribunal.</p>
<p>PAVIL – Park and Village Information Link, Queensland</p> <p>https://caxton.org.au/park_village_information.html</p> <p>Sample publication</p> <p><i>Frequently Asked Questions. Living in a Retirement Village</i></p> <p>https://caxton.org.au/pdfs/RV%20living%20in.pdf</p>	<p>PAVIL is a free state-wide service and is part of Caxton Legal Centre Inc. PAVIL’s aim is to improve access to legal advice for manufactured home and retirement village residents who require specialist advice and information to assist them to understand and exercise their rights under the contracts and legislation governing their living arrangements.</p> <p>Legal assistance focuses on self-resolution at the earliest stage of a dispute, however if necessary, PAVIL may negotiate with a park or village operator on behalf of a client, provide guidance and assistance through the dispute resolution process and assist with court representation in exceptional circumstances.</p>
<p>Dispute Settlement Centre of Victoria</p> <p>http://www.disputes.vic.gov.au/dispute-advice</p>	<p>Part of the Victoria Department of Justice and Regulation, the Centre offers free advice to help people deal with their dispute.</p> <p>The website includes a section on services for older people.</p>
<p>The Aged-care Rights Service (TARS), New South Wales</p> <p>http://tars.com.au/</p>	<p>TARS is a community legal aid centre that protects the rights of older people. It provides telephone advice, advocacy, legal advice and educational services. This includes the specialist retirement village residents’ legal advice service, which provides legal advice to residents (including former and prospective) on disputes and visits villages to conduct educational seminars with residents on their rights and responsibilities. TARS is working on a retirement village standard contract and has reviewed the RV section of the Solicitors Practice Manual (See 2012-13 Annual Report).</p>

APPENDIX 6: UK BEST PRACTICE IN HOUSING COMPLAINTS AND DISPUTES HANDLING

Title	Summary
Association of Retirement Housing Managers <i>Code of Practice</i>	The Code is currently under review. There are three similar codes of practice for England Scotland and Wales. The Code covers the complaints procedure; provision of information about complaints procedure to residents, staff training, target response times, mediation and conciliation.
ARHM, LEASE and Age UK <i>Commonhold and Leasehold Reform Act 2002 Leasehold Retirement Housing Your Rights and Remedies</i> http://www.housingcare.org/downloads/kbase/415.pdf	This publication defines leasehold, retirement scheme and retirement housing; explains landlord complaints procedures, mediation services, the independent housing ombudsman and statutory remedies.
Chartered Institute of Housing <i>A Guide to Making Complaints for Sheltered Housing Residents</i> http://www.housingcare.org/downloads/kbase/3124.pdf	Targeted to residents, this guide helps them to decide whether to make a complaint, how to make a complaint to their housing provider or other agency such as the Housing Ombudsman, how to make their complaint effectively and where to go for advice and information.
Chartered Institute of Housing <i>How to develop your complaints process</i> http://www.cih.org/publication-free/display/vpathDCR/templatedata/cih/publication-free/data/How_to_develop_your_complaints_process	Targeted to housing providers, this guide sets out the key principles and features of a successful complaints process. Key principles: positive and flexible; open and accessible; quality process; involve residents in monitoring and review of the process. Includes good practice examples from housing providers. Lists information resources.
Chartered Institute of Housing <i>How to work with tenants panels to resolve disputes</i> http://www.cih.org/publication-free/display/vpathDCR/templatedata/cih/publication-free/data/How_to%20work_with_tenant_panels_to_resolve_complaints	Targeted to housing providers, this guide sets out how to work with tenants to establish and ensure that tenant panels (required by law) fulfil their role in resolving complaints and disputes.
Housing Ombudsman Service <i>Dispute resolution elearning</i> http://www.housing-ombudsman.org.uk/learning-faqs/dispute-resolution-e-learning/#.VL6739KUcfY	There are two online training courses, one for landlords, and one for tenants and designated persons.

<p>Housing Ombudsman Service <i>Dispute resolution principles</i> http://www.housing-ombudsman.org.uk/learning-faqs/dispute-resolution-principles/#.VL67Q9KUcfY</p>	<p>A simple diagram setting out the three principles of dispute resolution: be fair – treat people fairly and follow a fair process; put things right; learn from issues raised.</p>
<p>HouseMark <i>Good practice from HouseMark’s Complaints Accreditation Scheme</i> http://www.housemark.co.uk/hmresour.nsf/lookup/Complaints_CA_good_practice_briefing.pdf/\$File/Complaints_CA_good_practice_briefing.pdf</p>	<p>Covers: leadership and strategic commitment; open and accessible; timely and effective complaint handling; positive approach to complaints; tackling causes of complaints; monitoring performance; continual improvement.</p> <p>HouseMark also offers an online tool for complaints benchmarking, which enables landlords to compare their practices with other landlords, conduct self-assessment and data collection for service improvement. Data can be shared with tenants.</p>
<p>LEASE <i>Alternative Dispute Resolution Guidance Note</i> http://www.lease-advice.org/documents/Alternative_Dispute_Resolution.pdf</p>	<p>Answers to FAQs about disputes and alternative dispute resolution e.g. mediation, arbitration and adjudication.</p> <p>The full range of advice guides http://www.lease-advice.org/publications/</p>
<p>National House Building Council <i>Sheltered Housing Code of Practice</i> http://www.housingcare.org/downloads/kbase/3316.pdf</p>	<p>The Code covers the duties of developers and builders of sheltered housing, the purchaser’s information pack, the management agreement and the purchaser’s legal rights. A consultation and complaints procedure is set out.</p>
<p>Scottish Public Services Ombudsman <i>The Registered Social Landlords’ Model Complaints Handling Procedure (CHPs) Guide to Implementation</i> http://www.valuingcomplaints.org.uk/wp-content/media/RSL-Model-CHP.pdf</p>	<p>This document applies to registered social landlords. The aim is for a simple, standardised procedure across the housing sector to make it simpler for customers to complain, ensure staff and customer confidence in complaint handling and encourage bodies to make use of lessons from complaints.</p>

APPENDIX 7: HOUSING DISPUTE PREVENTION

<p>Consumer Affairs Victoria</p> <p><i>Retirement villages: good practice to address key issues</i></p> <p>http://www.consumer.vic.gov.au/library/Publications/Businesses/Retirement-village-operators/Good-practice-to-address-key-issues.pdf</p>	<p>The document presents seven protocols that specify measures that retirement village managers can take to prevent commonly- arising issues from causing friction in villages. The purpose of the protocols is to prevent disputes arising and to promote good relations in villages to enhance the experience of residents. The protocols cover: changes to services, maintenance charges and process, what is covered by service and capital charges, presentation of annual financial statement, marketing procedures for a unit when a resident leaves or dies, and refurbishment and reinstatement of units.</p> <p>The document also presents general principles in communication, in handling and resolving complaints and in dealing with disputes between residents.</p>
<p>Chartered Institute of Housing</p> <p><i>How to learn from complaints to improve services</i></p> <p>http://www.cih.org/publication-free/display/vpathDCR/templatedata/cih/publication-free/data/How_to_learn_from_complaints_to_improve_services</p>	<p>The guide sets out: how to record important information about complaints; identify the lessons to be learned from the complaints; develop actions to resolve complaints and prevent similar complaints arising again; and publicising and promoting improvements. The guide includes examples of how housing providers use complaints information for continuous service improvement.</p>
<p>CLG Ministerial Working Group</p> <p><i>Effective Resident Involvement and Consultation in Sheltered Housing A Good Practice Guide for Providers and Commissioners</i></p>	<p>Better involvement and consultation can help reduce complaints and disputes.</p> <p>Outlines six key elements of good practice: review current practice; clarify objectives; be prepared; know your people; learn from others; sustainability.</p>
<p>Housing Ombudsman Service</p> <p><i>Learn from Outcomes</i></p> <p>http://www.housing-ombudsman.org.uk/learning-faqs/dispute-resolution-principles/learn-from-outcomes/#.VSyXlfmUfSg</p>	<p>A web page with practical suggestions for how to use complaints to improve service delivery.</p>